



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-5848

Re: Construction of Art. 7065b-13(d)
Vernon's Ann. Civ. Stat., and other
pertinent statutes with respect to
the notarial powers possessed by
authorized representatives of the
Comptroller.

Your letter requesting an opinion from this department
upon the above subject matter is as follows:

"Field representatives of this Department investigate and verify the basic information contained in thousands of claims filed for the refund of tax paid on motor fuel used for non-highway purposes. The territory assigned to most of the investigators covers several counties. They frequently find it necessary because of unintentional irregularities, to assist the claimant in preparing new claims which the Motor Fuel Tax Law - Art. 7065(b), Sec. 13(d), V.A.C.S. - requires in affidavit form. They also must take affidavits from employees and associates of the claimant; from dealers in refund motor fuel and their employees who issue invoices of exemption to cover the refundable motor fuel, and from transporters who deliver the motor fuel.

"Approximately 93% of the 246,000 refund claims filed in the last fiscal year were filed by farmers and ranchers. Thus most of the investigations made by Comptroller representatives occur on farms and ranches many miles distant from a notary public and the investigator must ask the claimant, or other persons from whom affidavits are desired, to leave their work and drive into the office of a Notary Public which not only involves loss of time but causes additional mileage and travel expense.

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"Section 24 of the Motor Fuel Tax Law contains the following provision: 'The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purpose contemplated by this Article, have the power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, and documents.' The said Section 24 further describes the procedure to follow in complying with the above provision and contains the following provision: 'The Comptroller may, if necessary to enforce the provisions of this Section, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the office of the Comptroller.'

"In order to save the unnecessary expense and travel in locating and driving long distances to Notary Publics, the Comptroller desires to delegate certain employees, whose duty it is to investigate refund claims, and vest them with the power and authority to administer oaths and take the acknowledgments of refund claimants and other affiants from whom it is necessary to take statements in affidavit form in connection with the enforcement of the motor fuel tax law. For this purpose, the Comptroller will delegate such power to the selected employees in writing and will require each such employee to take the constitutional oath of an appointive officer in the manner directed in your Opinion No. 0-322, said instruments to be filed in the office of the Comptroller. A copy of the proposed oath and filing record is attached hereto.

"1. Will you please advise me whether an oath or affirmation administered in connection with the administration and enforcement of the motor fuel tax law by a Comptroller employee, who has taken the constitutional oath of office and has been delegated authority by the Comptroller to administer oaths as described hereinabove, be a valid oath administered in the manner required by law, and by a person duly authorized to administer the same in the matter or cause in which such oath or affirmation is taken, as is contemplated by

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Article 304 of Vernon's Annotated Penal Code.

"2. If you answer the above question affirmatively, will you please advise me further whether an oath administered by such employee in the manner and under the conditions described in the preceding paragraph in taking the acknowledgment of a refund claimant in the execution of a refund claim will comply with the requirements of Section 13(d) of said motor fuel tax law which provides that a claimant for refund of motor fuel tax shall file with the Comptroller an affidavit, on such form as may be prescribed by the Comptroller?"

Section 24 of Article 7065b cited by you expressly provides that:

"The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall for the purpose contemplated by this Article have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents. * * *

The power to administer oaths and to certify such oaths or affidavits is not peculiar to notaries public or clerks of the various courts, but on the other hand, there are numerous instances in our statute wherein other officers or representatives are clothed with such power. The granting of such power is essentially a legislative prerogative -- there being no constitutional provision limiting such power.

Article 304 of the Penal Code, also cited by you, is as follows:

"The oath or affirmation must be administered in the manner required by law, and by some person duly authorized to administer the same in the matter or cause in which such oath or affirmation is taken."

This requirement is pertinent to a prosecution for perjury.

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Since, as we have shown, your legally qualified and designated representative is discharging the official duties required of him under the statute above quoted, the oath or affirmation administered by him is "in the manner required by law", and by a "person duly authorized to administer the same."

It follows that both of your questions should be answered in the affirmative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Ocie Speer
Ocie Speer
Assistant

OS-MR

